

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

SHELBY WAYNE BEST # 106151

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:16cv118-LG-RHW

**DAVID CROCKER, JAKE PETREE,
DANIEL DAVIS, JAMES BOLTON,
CHARLES CARLISLE, ETEINNE MIXON
and JAMES DREWERY**

DEFENDANTS

REPORT AND RECOMMENDATION

This *pro se* prisoner civil rights case came before the Court for a duly noticed *Spears*/omnibus hearing scheduled for Wednesday, April 26, 2017 at 9:30 a.m., before United States Magistrate Judge Robert H. Walker at the United States Courthouse in Gulfport, Mississippi in Courtroom 881. The docket reflects, and the undersigned finds, that Deputy Clerk Sandra Ryan properly notified Shelby Wayne Best of the hearing by mailing notice thereof to his address of record on February 8, 2017. The mailed notice of the April 26, 2017 setting has not been returned as undeliverable, and was presumptively received by Best; the writ which was contemporaneously issued to George County Correctional Facility to secure Best's presence at the hearing was received by the facility before February 13, 2017. [42] The facility has since advised the Court that Best was released from confinement on parole on February 22, 2017. Shelby Wayne Best does not appear on an inmate search of the Mississippi Department of Corrections web site.

Best filed this action on April 6, 2016, and the Court has repeatedly warned him that his failure to keep the Court apprised of his current address or to comply with any order of the Court might result in dismissal of his lawsuit. See Orders [3], [5], [6], [8], [13] and [21]. The docket

reflects Best has filed no change of address since his release, in fact he has filed nothing in the case since January 26, 2017 when he notified the Court of his George County Correctional Facility address. [39] Defense Counsel Martin Edwards was present for the hearing at the appointed time, but Best failed to appear. The undersigned called Best's name three times in open court with no response, and Deputy Ryan called his name three times with no response in the hallway outside the courtroom.

RECOMMENDATION

The undersigned recommends that this case be dismissed due to Plaintiff's failure to comply with the Court's order to appear for the *Spears*/omnibus hearing on April 26, 2017.

NOTICE OF RIGHT TO APPEAL/OBJECT

After being served a copy of a Report and Recommendation, a party has 14 days to serve on the other parties, submit to the assigned District Judge, and file with the clerk of court his written objections to the Report and Recommendation. The objecting party must specifically identify the findings, conclusions, and recommendations to which he objects; the District Court need not consider frivolous, conclusive, or general objections. An opposing party has seven days after being served with objections, to serve and file a response or to notify the District Judge he does not intend to respond to the objections. Except on grounds of plain error, a party cannot attack on appeal any proposed factual finding or legal conclusion accepted by the District Court to which he did not timely file objections. *Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

Signed, this the 26th day of April, 2017.

/s/ Robert H. Walker
ROBERT H. WALKER
UNITED STATES MAGISTRATE JUDGE